

The Gazette

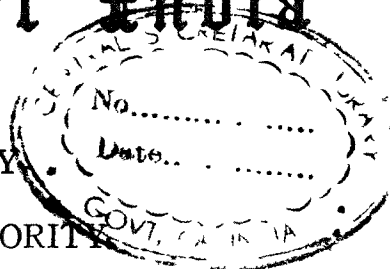


of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY



No. 159] NEW DELHI, WEDNESDAY, MAY 23, 1956

ELECTION COMMISSION INDIA

NOTIFICATION

New Delhi, the 5th May 1956

S.R.O 1189—Whereas the election of Shrimati Sucheta Kripalani as a Member of the House of the People from the New Delhi constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act 1951 (XLIII of 1951), by Shrimati Manmohini Sahgal resident of 8-A Lodi Road New Delhi,

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has in pursuance of the provisions contained in Section 103 of the said Act sent a copy of its order to the Commission

Now, therefore in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal

IN THE COURT OF THE ELECTION TRIBUNAL, DELHI

ELECTION PETITION No 8 OF 1952

(Election Petition No 106 of 1952 before the Election Commission)

Shrimati Manmohini Sahgal—*Petitioner*

Versus

Shrimati Sucheta Kripalani—*Respondent*

ORDER

During the last General Elections held in January 1952 the petitioner Shrimati Manmohini Sahgal, the respondent No 1 Shrimati Sucheta Kripalani and respondents Nos 2 to 8 were the candidates duly nominated as seeking election to the House of the People from the Parliamentary Constituency, New Delhi. Of these respondents Nos 6 to 8 had withdrawn on 13th December 1951 the last date meant for the purpose. Polling took place on 14th January 1952. The counting of votes was done on 18th January 1952 and as the result thereof Shrimati Sucheta Kripalani respondent was declared as duly elected. The total number of votes polled was 1 02 826 out of which the respondent No 1 got 47 935 votes while the petitioner got 40,064 votes. 14 376 votes were shared by respondents Nos 2 to 5 and 651 votes were declared invalid. The name of the respondent No 1 as the successful candidate was notified in the official Gazette on 24th January 1952.

2 The respondent No 1 filed the return of her election expenses (Ext P/4) along with her declaration (Ext P/2) and the declaration of her the then Election Agent, Shri N Krishnaswamy (Ext P/3) on 6th March 1952. Notice of the filing of this return was published in the official Gazette of 29th March 1952. The Election Commission found certain defects in the said return and because of them held that the respondent No 1 had incurred disqualification. This was published in the Gazette on the 17th April, 1952. The defects pointed

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2. The respondent No. 1 filed the return of her election expenses (Ext. P/4) along with her declaration (Ext. P/2) and the declaration of her then Election Agent, Shri N. Krishnaswamy (Ext. P/3) on 6th March 1952. Notice of the filing of this return was published in the official Gazette of 29th March 1952. The Election Commission found certain defects in the said return and because of them held that the respondent No. 1 had incurred disqualification. This was published in the Gazette on the 17th April, 1952. The defects pointed

out by the Election Commission were communicated to the respondent No. 1. The respondent No. 1 corrected the entries in the return by showing the various items of expenses in the proper parts of the form thereof and files the corrected second return on the 30th of April 1952. This second return is Ext. R/1 on the record and Ext. R/3 is the declaration of the respondent No. 1 in support thereof. Thereupon the Election Commission removed the disqualification which had been incurred by the respondent No. 1 vide notification in the official Gazette dated the 7th of May 1952.

3. In the meanwhile, on the 7th of April 1952 the petitioner Smt. Manmohini Sehgal had filed the election petition under section 80(1), 100 and 101 of the Representation of the People Act 1951 for the declaration that the election of the respondent Shrimati Sucheta Kripalani was void and praying that the petitioner be declared as having been duly elected as a Member to the House of the People from the Parliamentary Constituency, New Delhi. It would be noticed that this petition was filed before the filing of the second and revised return of election expenses by the respondent No. 1 which as pointed out already was filed on the 30th of April 1952. The result of this has been that in the petition itself the petitioner could raise objections only in respect of the first return (Ext. P/4). Reference to the second return (Ext. R/1) was made in the written statement filed by the respondent No. 1 on the 7th October 1952, and then the petitioner filed replication on the 15th October 1952, in which she mentioned her objections in respect of the second return. She however, clearly mentioned therein that her objections to the second return were the same as were in respect of the first return.

4. The grounds on which the election of the respondent No. 1 has been challenged by the petitioner briefly stated are as follows:—

Firstly, it is said that the respondent No. 1 incurred by herself or through her agents expenses on account of the conduct and management of the election in excess of the maximum amount allowed by law and thus contravened rule 117 of the Rules made under and section 77 of the Representation of the People Act. In List I attached to the petition are given the particulars of this alleged corrupt practice.

Secondly, it is alleged that the respondent No. 1 had in connection with her election employed for payment to persons other than and in addition to those specified in Schedule VI and had thus contravened Rule 118 made under and section 77 of the Representation of People Act, 1951. Particulars of this alleged corrupt practice purport to have been given in list 2 attached to the petition.

The third objection is that the respondent No. 1 hired and procured, herself or through her agents vehicles for the conveyance of electors to and from the Polling stations at Montisorec School, Prince's Park and Lodhi Road and is thus guilty of the major corrupt practice under section 123(6) of the Representation of the People Act, 1951. Details of this alleged corrupt practice are given in list 3 attached to the petition.

The fourth objection is that the respondent is guilty of the minor corrupt practice under section 124(4) of the Representation of the People Act 1951 because of having made the return of her election expenses which is false in material particulars. It is further said in para. 9 of the petition that the return (Ext. P/4) is not in accordance with the Rules and is no return in the eyes of the law. Particulars of this purport to have been given in list 4 attached to the petition.

Fifthly it is alleged that the respondent No. 1 has been guilty under section 125(3) of the Representation of the People Act of the alleged practice of issuing herself or through her agents, circulars, records and posters having reference to the elections which did not bear the names and addresses of the printers or publishers thereof. Particulars of these are given in list 5 attached to the petition.

Sixthly, it is alleged that the Representation of the People Act and the Rules made thereunder were contravened because at some polling stations polling continued beyond the prescribed time and at the polling booths in Rajindar Nagar, the agents of the respondent were noticed canvassing and soliciting voters for the returned candidate and persuading the voters not to vote for the petitioner, inside the booths and within 100 yards, of the booths.

Lastly, it is alleged that at the time of the counting of votes, the ballot boxes were not opened one by one as required by Rule 46(1)(vi), but as many as 120

boxes were opened at the same time and their counting was simultaneous, with the result that the petitioner or her agents could not be present at the counting of the ballot papers of each of the boxes.

5. To avoid repetition, it is not considered necessary to give here in detail the particulars of illegal or corrupt practices given in the lists attached to the petition. They will have to be considered in detail when relevant issues are taken into consideration for findings being recorded thereupon.

6. Shrimati Sucheta Kripalani the only contesting respondent filed her written statement on the 7th October 1952. She took the preliminary objections that the disqualification incurred by her having been removed by the Election Commission under Section 144 and the second return filed by her having superseded the first return objections about the return cannot be entertained. It was further urged that a minor corrupt practice which cannot vitiate the election and which is not capable of materially affecting the result of the election is wholly outside the scope of a proper election petition and should not be taken cognisance of by the Election Tribunal.

7. The allegations of the petitioner in respect of the alleged illegal and corrupt practices are all denied by the respondent No. 1. Thus she denies having incurred expenses in excess of the maximum allowed under the Representation of the People Act and the Rules framed thereunder; she denied having ever employed on payment by herself or through her agents any person in contravention of section 77 or Rule 11b of the Act. She has attached List 2 to her written statement as detailed reply to the list 2 attached to the petition. According to her, the petitioner's allegation about her having hired or procured any vehicle for the conveyance of voter to and from the polling stations are vague and wholly incorrect.

8. In respect of her return of election expenses it is alleged that in the first return (Ext. P/4), there were only some technical errors and misclassification which defects only were removed by filing the second return (Ext. R/1). She has attached list 4 to her written statements as containing detailed replies to the allegations of the petitioner in list 4 attached to the petition.

9. She denies having herself or through her agent issued any circular records or posters which did not bear the names of the printers or publishers thereof. According to the contesting respondent at no polling station was the polling continued beyond the fixed time. The petitioner's allegations about the respondent's agents or workers having canvassed or persuaded the voters within the polling booths or within 100 yards thereof to vote for the respondent and not to vote for the petitioner are denied by the answering respondent and are alleged to be wholly incorrect. According to the respondent, there was no illegality or irregularity whatsoever in the counting of the votes. It is further said that the Returning Officer in this case happened to be the Chief Electoral officer and he was competent in law to decide any objections in respect of the method of the counting of the votes. No objections were raised then and none can be raised now.

10. The petitioner filed replication on 15th October 1952. It is not necessary to detail the allegations thereof here. Most of them are repetitions of the allegations in the petition itself. In respect of the preliminary objection it was urged that the question whether the return was or was not false in material particulars was outside the scope of section 144 of the Representation of the People Act and the Election Commission could not and did not decide that point and this Tribunal has the jurisdiction to go into and decide that point. It is alleged in para. 2 of the replication that the revised return is false in material particulars and the objection with regard to the original return also apply exactly with regard to the revised return. To her replication the petitioner has again attached list by way of replicas to the contents of the lists 1 to 5 attached to the written statement of the respondent No. 1.

11. On 28th October 1952 the following two preliminary issues were framed:—

1. Whether it is relevant for the purpose of the present petition to enquire into the allegation that the return of election expenses filed by the respondent was false in material particulars or the return was not in accordance with the rules?
2. What is the effect, if any, of the order made by the Election Commission, dated 7th May 1952 removing certain disqualifications incurred by respondent No. 1 in connection with the return of election expenses?

12. These issues were decided by the Tribunal under its order, dated 21st June 1953. It came to the conclusion that it had the jurisdiction to go into the allegations of the petitioner that the return of expenses submitted by the respondent is false in material particulars, but that it was not open to the petitioner to urge that the return is not in accordance with the rules.

13. After the decision of the preliminary issues the following issues were framed on the same day *viz.*, 21st January 1953 and the case was listed for recording the petitioners evidence from 16th February 1953.

1. Did respondent No. 1 incur by herself or by her agents expenses on account of the conduct or management of the election in excess of the maximum as in Schedule V of the Conduct of Election and Election Petition Rules, 1951.
2. Did respondent No. 1 employ for payment in connection with the election, persons other than or in addition to those specified in Schedule VI of the said Rules?
3. Did respondent No. 1 hire or procure vehicles for the conveyance of electors on 14th January 1952 as mentioned in paragraph 8 of the petition?
4. Was the return of the election expenses filed by respondent No. 1 false in material particulars? If so, what is the effect.
5. Did respondent No. 1 by herself or by her agents issue circulars or posters which did not bear the names or addresses of the printers or publishers thereon. If so, did it materially affect the result of the election?
6. Did the polling continue beyond the prescribed time at the polling stations mentioned in paragraph 11(a) of the petition? If so, did this materially affect the result of the election?
7. Did respondent No. 1 or his agents canvass or solicit votes for her or persuade the voters not to vote for the petitioner within a distance of 100 yards from the polling booths in Rajindar Nagar? If so has it materially affected the result of the election?
8. Did respondent No. 1 obtain any votes by corrupt or illegal practices referred to in the petition. If so, how many?
9. Is the election of respondents No. 1 liable to be set aside on any of the grounds mentioned in the above issues?
10. If issue No. 9 is found against respondent No. 1 is the petitioner entitled to be declared elected in her place?

14. The respondent No. 1 went up to the High Court by means of a writ petition against the findings on the preliminary issue against her and the further hearing of the petition was stayed under orders of the High Court. The said petition was dismissed by the High Court but the respondent Smt. Sucheta Kripalani was granted leave to appeal to the Supreme Court. She then went in appeal to the Supreme Court. Under the orders of the Hon'ble Supreme Court, the trial of this petition before this Tribunal was partially stayed in respect of the points to be effected by the decision on the points in appeal before the Hon'ble Supreme Court. Under its order, dated the 9th June 1954 this Tribunal, therefore directed that evidence shall be recorded in respect of issues Nos. 3, 5, 6, 7 and 8 and not in respect of Issues Nos. 1, 2 and 4. In view of that order the statements of all the witnesses who were to be examined before the Tribunal for both the parties in connection with issues Nos. 3, 5, 6, 7 and 8 were recorded by the 19th of June 1954. On that date, the hearing had again to be adjourned *sine die* in view of the stay order of the Hon'ble Supreme Court and also because the record was sent for by the Hon'ble High Court.

15. The appeal before the Supreme Court was decided on 6th September 1955 and then the stay order was vacated. The recording of evidence on issues Nos. 1, 2, and 4 started on 30th November 1955. After the close of evidence January 21, 1956 was fixed for arguments on behalf of the petitioner. For reasons given in our order, dated 21st January 1956, it was considered necessary to issue notice to Shri N. Krishnaswamy, agent of Smt. Sucheta Kripalani respondent under section 99 of the Representation of the People Act. Notice was therefore directed to be issued to N. Krishnaswamy. Shri N. Krishnaswamy after an unsuccessful attempt to raise preliminary objection about the legality of the notice at that stage ultimately filed his reply to the notice on 9th February 1956. He requested for a large number of witnesses who had been examined by the petitioner and some of

respondents witnesses and the respondent No. 1 herself to be recalled for cross examination on his behalf. This list was scrutinized by the Tribunal on 11th February 1956. The learned counsel for the petitioner made the following statement on that day:—

"Shri N. Krishnaswamy prepared the Return Ext. R/1 falsely inasmuch as he did not prepare it in accordance with the original vouchers and the supporting receipts and bills and secondly mentioned in Part K of Ext. R/1 several persons beginning from Shri Jaipal to Shri Asit Chatterjee as honorary volunteers instead of as persons employed on payment in connection with the election of Shrimati Sucheta Kripalani as correctly shown in Part B of the first return Ext. P/4 at Nos. 1 to 119. In the first return, he had correctly shown the payments made to these persons as on account of remuneration or salary in connection with the election work of Smt. Sucheta Kripalani, but in the subsequent return which is the subject matter of an inquiry in the present petition Ext. R/1, he deliberately and falsely transferred the names of these persons to part K and showed these persons to be honorary workers and payment made to them as on account of diet and conveyance expenses. In this view of the matter, none of the witnesses already examined by the parties whose names have been given by N. Krishnaswamy can be recalled, as they have said nothing against him on this point."

The Tribunal held that Shri N. Krishnaswamy was not entitled to summon for cross examination any of the witnesses named by him excepting the respondent No. 1. He was directed to summon Smt. Sucheta Kripalani for 14th February 1956 and his defence witnesses for 18th February 1956. On 14th February 1956 Shri N. Krishnaswamy stated that he did not intend to recall Smt. Sucheta Kripalani and gave her up. He applied for nine witnesses to be summoned as his defence witnesses. Five of them were local and were directed to be summoned for 23-2-1956. Two of the remaining four witnesses were sent to prove that one R. Iyenger whose name appeared in the statement of Shri N. Krishnaswamy when he was examined as R.W. 22 is dead. The fact of his death was admitted on behalf of the petitioner *vide* her counsel's statement recorded that day and so those witnesses were given up. Of the remaining two witnesses, one was resident of Calcutta and the other of Poona. They were directed to be examined on commission. In view of certain undertakings by Shri N. Krishnaswamy, the writs of commission were given 'dasti' to him *vide* our order dated 14-2-1956. They were made returnable by 8-3-1956. Shri N. Krishnaswamy failed properly to carry out his undertakings in respect of the examination of those witnesses with the result that they could not be examined and the evidence was closed on 8-3-1956. Arguments were started on that day and were concluded on 14-3-1956. We have thus detailed above the circumstances under which the trial of this petition lingered on unavoidably for well nigh four years in spite of our best efforts to expedite its disposal and we are as sorry for this delay, as anyone can well be.

Issue No. 1.

16. According to Schedule V of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 the maximum amount of election expenses that the respondent No. 1 could incur in seeking election to the House of the People from the Parliamentary Constituency, New Delhi is Rs. 12,000. According to her return Ext. R/1, its supporting vouchers, cash book and her statement the respondent No. 1 spent in all Rs. 11,338-2-9 including Rs. 500 deposited as security which is not to be treated as part of the election expenses. The petitioner alleges that the respondent No. 1 incurred further expenses which she has not shown in her return and when they are taken into consideration the total expenses far exceeded the maximum allowable, i.e., Rs. 12,000. She has given the details of these alleged other expenses in list 1 attached to her petition. This is denied by the contesting respondent and the details of list 1 of the petitioner are denied in detail in list 1 attached to her written statement. In her replication the petitioner has again reiterated the alleged extra expenses, but it would be noticed that there are some differences in the amount of expenses as alleged in list 1 of the petitioner and in list 1 of the replication. We shall consider these item by item according to the list No. 1 of the petitioner.

17. (a) The petitioner alleges that the respondent got posters which were distributed amongst the voters and pasted at various places, printed at the Tej Press, Delhi. Printing charges thereon have not been shown in the return and are estimated to be Rs. 1,000. The respondent alleges that she gave her printing work to M/s. British India Press, who employed some other Presses also for getting some posters and other matters printed. The respondent paid all charges to

ges are duly shown in the return.

18. On behalf of the petitioner there is hardly any evidence in support of this point. P.W. 2 Pt. Des Raj was first examined on 9th June 1954. He is proprietor of the British India Press, through which the respondent got her printing work done. He stated that during the last General Elections, in December 1951 or thereabout his press received orders from 6, Jantar Mantar Road, where the office of the K.M.P.P. was located to print certain posters. The orders were oral. He produced one copy each of some of the posters. They are Exts. PW2/1 to PW2/12. He further stated that some of these were printed at his press and others he got printed at other presses. On each the name of the press where it was printed is noted. His statement suggested as if these posters were got printed by the K.M.P.P., but that is his incorrect impression. Smt. Sucheta Kripalani used to live at 6, Jantar Mantar Road and office of the K.M.P.P. was also there. He conceded in cross-examination that orders used to be taken by an employee of his and he himself had never gone to 6, Jantar Mantar Road and that particulars of the orders were not entered in any book or register kept at the office. He was recalled and examined again on 21st December, 1955. He said nothing in favour of the petitioner and thus he does not help the petitioner on this point. If at all, his statement supports the respondent that the respondent had not to pay anything to the Tej Press, even if the British India Press got some of her posters printed there. The British India Press must have paid the Tej Press for such work, and included it in its bills against the respondent No. 1.

19. Another witness examined by the petitioner on this point is P.W. 2 Shri Kishan Gopal, but he proves nothing relevant and is to be ignored. The only other witness on this point is P.W. 12 Shri Dharam Vir, Manager of the Tej Press. He could not produce the accounts for December, 1951 and January, 1952 which were summoned from him and stated that the accounts for the years 1950-51 and 1951-52 were in the same register which could not be traced and appears to have been misplaced. In his very examination-in-chief he stated that so far as he could recollect his press has never done any work for Smt. Sucheta Kripalani. In cross-examination he explained that at times other presses got their printing job done at his Tej Press and it was particularly so during the last general elections. In such cases, where printing is done for another press, the name of the printer under the printed matter would be of the press at which the printing is actually done. This statement coupled with the statement of P.W. 2 make it clear that though some of the posters of the respondent appears to have been printed at the Tej Press, the respondent had not to pay anything to that press for she had given her work to the British India Press and that Press got some work done by the Tej Press. It cannot therefore be said that the respondent got some posters printed at the Tej Press and paid for that to the Tej Press and failed to account for these payments in her return. The respondent No. 1 has stated on oath that she never got any work done at the Tej Press and never made any payment to that press. This item is thus not proved by the petitioner.

20. (b) In this the petitioner has alleged that the respondent No. 1 jointly with Shri Surendra Nath Jauhar who was candidate got posters and hand-bills printed at the Khanna Litho Press and distributed them at New Delhi. She should have shared the expenses with Shri Jauhar and shown them in her return, but this has not been done. Estimate given is Rs. 500. This is denied by the respondent No. 1.

21. The petitioner has not been able to produce any evidence in support of this contention. P.W. 13 Shri Charan Dass, Assistant Manager of the Khanna Litho Press, Delhi was examined, but he did not support the petitioner. Shri Surinder Nath Jauhar was summoned by the petitioner, but was not actually examined and was given up. Thus this item too is not proved by the petitioner.

22. (c). In this it is alleged that the petitioner had set up her election offices at Lajpat Nagar, Lodhi Road and various other places in Pahargani and had incurred expenses estimated at Rs. 5,000 on them which have not been shown in the return. This is denied by the petitioner in para. (c) of list (1) attached to her written statement. In para. (c) of list 1 attached to the replication of the petitioner, the allegations are amplified. It is said that the petitioner spent at least Rs. 1,000 for each of her election office, on rent of rooms for the offices furniture hire, and payment to the staff. A further allegation is added that she got telephone No. 44062 at Laddu Ghati office and spent Rs. 300 on the telephone calls.

23. So far as the question of the telephone goes, the petitioner has miserably failed to show that the respondent got any telephone connection for her use at the time of election campaign. Her witness No. 11 Shri N. S. Sircar, Investigating Inspector Telephones stated on the basis of his records that telephone No. 44669

was installed on 19th December, 1951 in the name of the K.M.P.P. This connection was closed on 18th January 1952. The total charges realised for installation and calls were Rs. 176-14-0. In cross-examination he made it further clear that the contract for the installation of the said telephone connection was signed by the Office Secretary of the K.M.P.P. It is thus clear beyond doubt that it was not the respondent who got this telephone connection, but it was the K.M.P. Party. Smt. Sucheta Kripalani has stated on oath that she did not apply for and did not get any telephone connection during her election campaign. P.W. 24 Ram Lal also admitted that the telephone connection at the alleged Laddu Ghati office was in the name of the K.M.P.P. There is evidence on the record to show that one office of the K.M.P.P. was shifted in those days from Old Delhi to Paharganj. The petitioner's allegations in respect of the telephone and its charges are not only established but stand fully refuted.

24. As regards the offices, in para. (c) of list (1) of the petitioner specific allegation is made only in respect of the alleged offices at Lajpat Nagar and Lodhi Road. It is only vaguely alleged that there were offices at "various other places in Paharganj". Even in para. (c) of list (1) attached to the replication no particulars are given of any office anywhere in Paharganj except that there is indirect reference to Laddu Ghati Office in connection with the telephone. Strictly speaking no evidence should have been allowed in respect of the alleged offices at various places in Paharganj, which was inadvertently done.

25. The respondent No. 1 has denied the allegations in respect of the offices. In her statement, she has stated, "in connection with my election, I never set up any office in any part of Delhi nor did I authorise anyone to do so."

26. On behalf of the petitioner, three witnesses namely P.W. 18 Vishwa Mitra, P.W. 20 Amar Nath and P.W. 24 Ram Lal have spoken about this point of offices. Vishwa Mitra in his examination-in-chief said "Smt. Sucheta Kripalani had set up an office in connection with her election at Mantola in Paharganj area". In cross-examination, however, he had to concede "I have no personal knowledge on the point whether the office in Mantola was set up by Smt. Sucheta Kripalani or by her party". His statement on this point is thus of no use.

27. Shri Amar Nath (P.W. 20) stated "in a mill in Chuni Mandi an office had been set up by Shrimati Sucheta Kripalani". In the lists attached to the petition or replication, there is no specific allegation about any office at Mantola or in the Mill at Chuna Mandi". This witness in cross-examination stated: "I never entered the office set up in the mill in connection with the election of Smt. Sucheta Kripalani and I do not know whether it was organised by Sucheta Kripalani or by her party". His statement on this point is thus of no use. He is a Congress man and was so during the last general election days and so cannot be said to be a very independent witness. On other points too his statement is not confidence seating. He appears to be under the influence of P.W. 24 Ram Lal who is an absolutely unreliable, untruthful and partisan witness and appeared to be very hostile to the respondent No. 1, as will be presently shown.

28. Ram Lal (P.W. 24) gave his caste as Brahman (Vachar). P.W. 20 described him as Ram Lal Vachar, while P.W. 18 described him as Ram Lal Sharma. On behalf of the respondent it has been suggested that Vachar are Khatri and not Brahmans. This witness has in his cross-examination tried to show that he can be described either as Vachar or a Sharma, but he had to admit that at no place in any document he ever described himself as 'Vachar'. He is an omnibus witness stating on all the points of facts alleged in the petition and adding many new ones which were never alleged. On no point his statement is reliable and from his attitude and demeanour in the witness-box it was clear that he was absolutely untrustworthy. His statement is but to be read to see how boldly he can tell lies. He is, however, very shrewd and has made his statement beautifully vague on many points. He is not an independent witness either. He is a member of the Okhla Tank Kisan Multi purposes Co-operative Society of which the petitioner is the Chairman. He joined the Congress in 1930 and is so at present. He said that in June, 1951 he became a member of the K.M.P.P. and remained so far one year. This to be sure is a lie. According to him, there was no fee for becoming a member of the K.M.P.P. and he had to pay none. This is a white lie. He added that he was given a membership card which, however, cannot be produced having been misplaced. This false allegation has been made by him, because he has stated that during the contested election days he was employed by Smt. Sucheta Kripalani as in charge of her propaganda work, which is incorrect and has been denied by the respondent in her statement. A suggestion was made to him that at present he is in the service of the petitioner.

witness Shri Des Raj (P.W. 23) stated in his cross-examination: "I have heard that P.W. Ram Lal Sharma is at present in the employment of Smt. Manmohini Sehgal petitioner". Again a suggestion was made to him that he was helping the petitioner in the conduct of this case. He denied this, but further cross-examination shows that the denial is incorrect. He conceded that he had been coming to the Court on several dates on which this case was to come up for hearing. He tried to explain that he used to come in connection with his other personal work. Details of the alleged personal work given by him show that this explanation could not have been correct and actually he used to come in connection with this case. He had to admit that he accompanied the process-server to get some of the petitioner's witnesses served with summons to appear before the Tribunal. The statement of this witness started on 1st December 1955. He admitted that he was present on 30th November 1955, although he was not summoned for that day. He further said that his father died at Delhi on 29th November 1955. A man cannot be expected unnecessarily to go to the Court on the next day after his father's death and all this shows that he had been attending as a "perokar" on behalf of the petitioner. It does appear to be true, as stated by Shrimati Sucheta Kripalani that he is a black mailer. He wanted her to help him in getting a loan from the Rehabilitation Finance Administration of which she has been a member. To get rid of his constant approaches to her she gave him a letter to the Deputy Chief Administrator, Rehabilitation Finance, which was luke-warm and had no recommendation. Ram Lal opened that letter and knowing its contents got annoyed. After that, about one year ago, when this petition was pending he went to her and hinted that unless she gave him some money he would go over to Smt. Manmohini Sehgal and convey to her such information as he had in connection with her election campaign. She refused to yield to the black-mail and paid him nothing.

29. On merits too the statement of this witness is unreliable and of no importance. He stated in connection with the point under consideration that Smt. Sucheta Kripalani had set up six offices in Paharganj area. They were located at Laddu Ghati, Original Road, Ram Nagar, Mantola, Durga Flour Mill and Baghichi Alla-ud-Din. The Laddu Ghati office was in a room taken on rent from a school mistress who herself was a tenant. She was paid Rs. 40 as rent. Telephone was got installed in this office. He is unable to give the name of the school mistress concerned. He conceded that the telephone connection was in the name of the K.M.P.P. We have also held already. This would show that this office was of the K.M.P.P. According to him, furniture for this office was taken on hire and the hire paid was about Rs. 70. He would, however, give no particulars of the dealer from whom the furniture was taken on hire, although according to him his shop is still there on Panchkuin Road. This is one of the instances where he has made his statement comfortably non-committal and beautifully vague. In cross-examination he conceded that Shri Suraj Prakash was the paid office Secretary of the K.M.P.P., Delhi office and he had paid the rent for the Laddu Ghati office to the school mistress which again shows that the said office was not of the contesting respondent. He further conceded that during election days Suraj Prakash was in charge of this party office at Ladu Ghati, the office at Ballimaran, Delhi having been closed. He admitted that there was furniture in the Ballimaran office but stated that it remained locked up there. It cannot be believed that the K.M.P.P. would take furniture on hire and allow its own furniture to lie idle in the locked up office at Ballimaran. To what extent he can go in telling lies can be seen from his assertion that he himself had paid the hire for the furniture for this office having got the money for that purpose from one Shri Mehra. Can this be believed when it is clear that the office was of the K.M.P.P. and Shri Suraj Prakash was in charge of it and had paid the rent of the building. At first he said that Shri Mehra was an Accountant in the office at 6, Jantar Mantar Road, New Delhi. Realising that the said office was the head office of the K.M.P.P. he changed and said that Mehra was an employee of the Central Relief Committee of which Smt. Sucheta Kripalani was the President and in his spare time he used to attend the office at 6, Jantar Mantar Road. Even thus he would be taken to have worked for the K.M.P.P. and not for the respondent, as suggested by him. He was reminded of his statement on the preceding day wherein he had said that he never handled any money of the respondent. He made a funny attempt to reconcile it with his new assertion that he paid the hire of the furniture.

30. Regarding the alleged office at the Original Road, he said that for that a room was taken from M/s. S. N. Sunderson & Company, Paint Merchants. Suffice it to say that we do not believe that any such office was kept by the respondent. No one from Messrs. Sunderson & Company has been called to support this allegation. This need not be considered in greater detail because even according

to Ram Lal, no expenses were incurred by the respondent in connection with this alleged office.

31 According to him for setting up an office in Durga Mills, a shop was vacated by Shri Durga Charan, M.L.A. No rent was paid for that shop. Shri Durga Charan who would have been the best witness, has not been called and examined by the petitioner. According to the witness, furniture for the office was also lent by Shri Durga Charan. Thus in any case the respondent is not shown to have incurred any expenses in connection with this alleged Durga Mill office. We however, do not believe that there was any such office of the respondent.

32 The Mantola office is alleged to have been in a shop vacated for the purpose by a tailor whose name too this witness failed to disclose. In cross examination, he said that the said tailor too continued working in that very shop, thus contradicting the original version that the tailor had vacated the shop. He could give no further particulars of that shop. Such a vague unsupported statement cannot be believed and we do not believe that there was any office of the respondent at Mantola.

33 According to this witness, the office at Baghichí Ala-ud-din was put up in the 'barthak' of Shri Suraj Bhan Lambaidar who charged no rent and further supplied free the necessary furniture. Thus no expenses are proved to have been incurred in connection with this alleged office. It cannot be a matter of surmise that there must have been some paid staff. Some honorary worker could be in charge. Actually we are not satisfied about the existence of this office either. Shri Suraj Bhan has not been examined. No independent witness corroborates this unreliable witness Ram Lal Sharma cum Vachar.

34 As regards the alleged Ram Nagar Office he said that actually the respondent No. 1 had no office of her own. Shri Surendar Nath Johar, who was an independent candidate to the Delhi State Assembly had his office and he had permitted the respondent to use it if and when necessary. Thus in any case no expenses are proved to have been incurred on this alleged office. Shri Surindar Nath Johar has purposely not been examined by the petitioner and so there is no corroboration of this witness when he says that he had permitted the respondent to use his office.

35 This witness has further stated that besides the above six offices, the respondent No. 1 had her office at Lajpat Rai Nagar, Rajindar Nagar, Vinay Nagar, Lodhi Road, Kitchner Road, Delhi Cantt. and Jangpura (Bhagal). The petitioner has in no place in any form alleged that the respondent had any office at Rajindar Nagar, Vinay Nagar, Kitchner Road, Delhi Cantonment or Jangpura. There is no independent evidence to show that she had any office at Lajpat Nagar or Lodhi road. There is no evidence to show that she incurred any expenses at any of these alleged offices at Lajpat Nagar etc. No surmises can be made in respect of expenses when there are no data even to make surmises.

36 We, therefore, record our finding that the petitioner has failed miserably to substantiate her allegations in para (c) of the list 1 of the petition and part (c) of list (1) of the replication.

37 The petitioner's allegation is that the respondent No. 1 has not shown in her return any travelling expenses or costs of entertainment incurred on account of her agents, clerks, workers and messengers. She estimates such expenses at Rs. 6,000 and says that they should have been shown in parts C & D of the first return. Further it is pointed out that according to her own vouchers Nos. 38 to 46, 54, 164, 165 and 206 to 214 submitted by her with her return expenditure incurred for this purpose on account of various persons mentioned therein amounted to Rs. 3,144. Lastly it is alleged that vouchers Nos. 172 to 174, 192 to 198 and 200 to 205 show that persons named therein were paid at Delhi on the date mentioned in the vouchers a total sum of Rs. 1,269 to reimburse their out of pocket expenses. The respondent No. 1 in her reply to these allegations in sub-para (d) of para (1) of list (1) attached to the written statement has alleged that there is no such item of expenditure over travelling or entertainment which may not have been included by her in her returns. She has rightly pointed out that all the items of expenditure over petrol are travelling expenses. She had not to undertake any journey out of Delhi State.

38 The petitioner has produced no evidence in respect of her allegations mentioned above. The later portion of the allegations in this para (c) of list 1 of the petition referring to certain vouchers of the respondent needs no consideration at this place, as if at all that amounts to saying that there is mis-classification in the return in respect of the items of expenditure in those vouchers. In any case,

the sums entered in those vouchers are all shown in the return at some place or the other and are included in the total expenses shown in the return. It cannot, therefore, be said that any such expenses have not been included in the return and this point is also decided against the petitioner.

39. The petitioner alleges that the respondent has failed to show in her return the costs of holding meeting after the 31st December 1952 at various places in the New Delhi constituency. According to her, the Press Reports from 1st January 1952 to 13th January 1952 show that on an average five meetings per day were organised by or on behalf of the respondent. She has estimated the total expenses at Rs. 2000 on this account.

40. The respondent in sub-para (c) of para (1) of her list No. 1 has denied these allegations of the petitioner and has alleged that whatever expenditure was incurred by her on this account has been included in the return. It is further suggested that the respondent herself organised hardly any meetings but used to attend meetings organised by other candidate and parties.

41. The petitioner has taken advantage of the occasion to allege in sub para (c) of para (1) of list (1) attached to it, to allege that the respondent has organised meetings at Paharganj. Rs. 60 to Rs. 65 were paid to Khalsa Tent House, Rs. 60 to Rs. 65 to New Light Tent House for Durries alone and Rs. 400 were paid to Modern Radio service for hire of radios alone. Rs. 200 were spent at the meeting organised at Paharganj on 12th January 1952, Rs. 75 are alleged to have been spent by the respondent in purchasing a loud-speaker in December 1951 in connection with her election. The respondent had no occasion to file any reply to that new allegation. In her statement she has denied all of them. According to her in January, 1952 no expenses were incurred by her or by any one on her behalf in connection with any meeting organised to canvass support for her. She denies having purchased any loud-speaker for her election purposes.

42. Petitioner's evidence regarding election meetings and expenses therefor is of a very vague sort and unreliable nature. The witnesses cannot be said to be independent and did not impress us as trustworthy. The first witness is P.W. 6 Smt. Bhagwanti. She stated about this point when she was recalled on 1st December 1955. She was at first examined on the 19th June 1954. She then said that she had read up to VIII class. Her husband Shri Amolak Ram is a member of the Delhi District Congress Committee. Before the partition of the country, they were living at Lahore and the petitioner was also living at Lahore. She and her husband are registered as displaced persons at Delhi. Strangely enough she does not know if her husband is registered at Jullundur as well. This ignorance is feigned because of an attempt to hide facts showing that the husband and the wife have been playing fraud and gaining undue favours from and through the Congress. At one time she worked as Camp Commandant in the Abducted Women's Recovery Camp at Sonapat and Ambala. She holds a public carrier permit from the Panjab Transport Authority. Her husband got iron and steel quota from Gurgaon. There is another permit for caustic soda either in her name or in the name of her husband. House No. 15/7 in Rajinder Nagar was allotted to her in October 1950. She conceded in reply to a court question that before the partition of the country she or her husband never had any permit for iron and steel, caustic soda or for public carrier. In her statement on 1st January 1955 in reply to court question she said that the permits for trucks were obtained, one in her name and one in the name of her husband, but she did not recollect if any truck was purchased at all. It is impossible to believe that she would forget such a fact and an inference can be drawn that she and her husband appear to have indulged in black marketing in respect of them. According to this witness in connection with the election campaign of the respondent No. 1 meetings were held in Rajinder Nagar from the beginning of December 1951 to 13th January 1952 and she attended three or four such meetings. This is inconsistent with the petitioner's allegation. She has alleged about meeting after 31st December 1951. She could not give names of the speakers at the meetings alleged to have been attended by her, except that at one of the meetings one of the speakers was one Budh Singh Tan. About this Budh Singh Tan it has come in evidence that he was a singer and was engaged by the Congress. According to her he had asked the audience to vote for the Praja Socialist Party. If that was so, it could not have been a meeting of the respondent or the K. M. P. Party. Finally she admitted in her statement that the meetings mentioned by her that they were organised by the K.M.P. Party. Those meetings they used to canvass for all the candidates set up by the K.M.P. Party.

43. The next witness on the point is P.W. 7 Monohar Singh who has described himself as a Doctor and who has luckily though very surprisingly been authorised to do that and practise as a Doctor irrespective of the fact that he holds no

qualifications for these. A man so favoured would certainly support a Congress Candidate. He stated about meetings when he was recalled and examined on 1st December 1955. He started by speaking about the respondent having set up an office in Rajindar Nagar about which the petitioner had made no allegations. This evidence was, therefore, ruled out as redundant on respondent's objection. He alleged about this office because he further said that the respondent held general election meetings in Rajindar Nagar and he attended four of them. At all the meetings arrangements for loud-speakers, durries, lights and other furniture used to be made. According to this learned Doctor, the respondent was a Candidate on behalf of the Praja Socialist Party and yet he was the person who was in charge of the election campaign on behalf of the Congress for the election of all Congress Candidates for Delhi State Assembly and the House of the People. He admitted that as such he had issued letters of authority to workers assigning them duties. He identified his signatures on Ext. R.W. 5/1 which is such a letter of authority issued by him to R.W. 5 Gurdas Mal. In his anxiety to support the petitioner by disowning Gurdas Mal as a Congressman, he volunteered that Gurdas Mal was not a Congress member or worker and his signatures on Ext. R.W. 5/A appears to have been wrongly obtained in a routine manner. Asked about meetings of other Candidates or parties, he said "As it is an old affair, I cannot say how many meetings were organised by the Candidates other than Smt. Sucheta Kripalani and Smt. Manmohini Sehgal nor can I say where and when those meetings were held." According to him at one of the meetings of the respondent Budh Singh Tan sang a very melodious song, but in the next question he had not the courage to deny the suggestion that Budh Singh Tan, Har Bhajan Singh Rattan and Asa Singh Mastana had been engaged by the Congress in connection with the last General Elections and were not permitted by the terms of their contracts to speak at the meetings of the Non-congressmen. He evaded by saying that he did not know about that. We are not prepared to attach any importance to the statement of this witness and to rely on it.

44. P.W. 10 Shri Mushtaq Rai Khanna is an absolutely useless witness who proved nothing in favour of the petitioner when he was first examined on the 16th of June 1954 when he was recalled and was examined on 1st December 1955 he said that meetings were held in Paharaganj area canvassing support for the respondent and usually at such meetings there used to be arrangements for loud-speakers, lights, durries and other furniture. He too is a Congressman. In cross-examination he conceded that he could not say whether those meetings used to be organised by her or by the K.M.P.P. He further said that at such meetings Shrimati Sucheta Kripalani used to speak in support of Shri Salwan who was opposing the Congress Candidate Bawa Bachittar Singh. This supports the respondent's version that she organised no meeting of her own but at times used to be invited to speak at meetings organised by the K.M.P. Party or other candidates opposing the Congress for Delhi State Assembly seats.

45. The Statement of P.W. 14, Tara Singh, made when he has recalled on 2nd December, 1955 belies the petitioner's allegation that furniture was taken on hire from the Khalsa Tent House by the Respondent No. 1, or on her behalf. He is Manager of the Khalsa Tent House and had brought the cash book for the relevant period. There was no entry showing any payment for hire of any thing from his concern by Shrimati Sucheta Kripalani, or by the K.M.P. Party or by P.W. Ram Lal. This belies Ram as well.

46. P.W. 16 Shri Amar Singh is Manager of the Sabharwal Tent House. He said that one Bharat Sarai had hired one tent and two durries from him for which he paid Rs. 30/- as hire on 21st December, 1951. Strictly speaking, this is irrelevant evidence for the petitioner has alleged only in respect of expenses for meetings alleged to have been held after 31st December, 1951. The statement is unreliable too. The so-called account book brought by him was merely a "yad dasht bahi". There were no regular entries. The pages were not numbered. There were blank spaces on the pages including the one on which this entry appeared. The various entries on that page were in different ink and different hands. He could not say about any entry as to who had made that. Though the Manager, yet he could not say if in 1951-52, any cash book and ledger were maintained. We do not attach any importance to his statement.

47. According to P.W. 18, Shri Vishwa Mittar, three or four meetings were organised by Shrimati Sucheta Kripalani, in connection with the election at Chehe-toote opposite the shop of P.W. Ram Lal and two at Hari Lal and Multani Dhandra. At all these meetings, there used to be loud-speakers, light and chairs and tables. Towards the end of his cross-examination he said "I attended four or five election meetings, organised by K. M. P. Party. They were the same meetings which I have described earlier as having been organised by Shrimati Sucheta Kripalani". Thus no meetings were organised by the contesting res-

48 P W 20 Amar Nath alleged to have attended five or six meetings held in support of Smt Sucheta Kripalani and said that there used to be proper arrangements for lights and chairs etc. In cross-examination he said 'At the time of the election he was exhorted to vote for the K M P Party candidate only.'

"I do not know who was making arrangements for furniture etc needed in connection with the meetings of the K M P P that I attended." This points to the conclusion that the meetings about which he spoke of were in all probability organised by the K M P Party.

49 P W 22, Shri Daya Krishan Knanna, proprietor of Khanna Electric Company did not support the petitioner and said that he never supplied any electric fittings and never did any electric installation work for Smt Sucheta Kripalani. Similarly P W 23 Smt Dev Raj, Government Contractor did not support the petitioner.

50 P R 24 Ram Lal Sharma, also spoke on this point. We have already shown how unreliable a witness he is and on this point too we are not prepared to believe him specially when there is no corroboration also.

51 P W 25, Shri Badri Nath, proprietor of Messrs Sehgal Radios Chandni Chowk, Delhi, who is certainly a reliable witness and based his statement on his accounts regularly kept had nothing to say in favour of the petitioner and rather supported the respondent in respect of certain entries in his accounts. In cross examination he belied the petitioner's allegation when he said that the books of his firm did not show that any loud-speaker equipment was purchased by Smt Sucheta Kripalani herself or by any one else on her behalf during the last general elections for Rs 750 or for any other sum.

52 This evidence of the petitioner is grossly inadequate and highly unsatisfactory and does not establish any of her allegations in sub para (e) of para (1) of list 1 of the petition and of the replication.

The respondent No 1 Shrimati Sucheta Kripalani herself had something to say on this matter. There is no reason to disbelieve her when in her statement she denied the relevant allegations of the petitioner. Regarding the loud-speaker she is supported even by P W Badri Nath. R W 14 Shri Indel Malhotra, Special Correspondent of the United Press of India, was deputed during those election days to cover election news in the Punjab, Pepsu and Delhi. From 2nd January 1952 till after the polling day, he remained in Delhi, and attended various election meetings. He has stated that he was particularly struck by two facts which he had mentioned in his despatches for his news agency. One of them was that no meeting was ever specially arranged or organized by Shrimati Sucheta Kripalani, in support of her own candidature as such. She used to talk to people at informal spontaneous gatherings. He is an independent witness and there is no reason to disbelieve him. Further corroboration of his is found from the statement of R W 19, Shri K Srinivasan, Correspondent of the Hindustan Times who is also an independent and reliable witness. R W 21 Shri Trilochan Singh, also said that so far as he knew, Smt Sucheta Kripalani never held any election meeting in Paharganj Area.

Thus while the petitioner's evidence is grossly inadequate and highly unsatisfactory to support her allegations in sub para (a) of para (1) of list (1) of the written statement and list (1) of the replication the evidence of the respondent No 1 is quite satisfactory and sufficient to refute those allegations and we record our find against the petitioner.

(f) In (1) (f) of list 1 of the petition it is vaguely asserted that the respondent displayed party flags at her meetings and on vehicles, but cost of purchase thereof estimated at Rs 250 is not shown in the return. Respondent denied having used party flags and having paraded any vehicles for propaganda. Petitioner has again amplified her allegation in para (1) (f) of list (1) of her replication by making a definite assertion that the respondent hired a truck at Rs 40 per day and paraded it from 4th January, 1952 to 14th January 1952 with a replica of hut (Symbol of K M P P) and party flag on it. Petitioner's witnesses on this point are Nos 6, 7, 16, 18, 20, 21 and 24 namely Smt Bhagwati, Dr Manohar Singh, Shri Mushtaq Rai, Shri Vishwa Mitter, Shri Amar Nath Bhatia, Shri Nanak Singh and Shri Ram Lal Ali of them excepting Nanak Singh have already been considered and dealt with in connection with other points and have been found to be unreliable. On this point too their statements are wholly unreliable and there are serious contradictions as well and so we are not prepared to believe them. The witnesses are not agreed even on such an important feature whether the replica-

of hut was paraded on a motor truck or motor cycle rickshaw or cycle rickshaw. They are not agreed as to what was written on the placards on the said replica of hut. P.W. Nanak Singh, said there was a board on it on which was written "Vote for Smt. Sucheta Kripalani." As against this P.W. 20, Shri Amar Nath said that the writing on the board was for "Convassing support for K.M.P. Party Candidates."

On behalf of the respondent the facts about the replica of hut are definitely established and it has been shown that she had nothing to do with it. P.W. 15, Shri Krishan Lal Mehta, was nominated as a K.M.P.P. Candidate to the Delhi State Assembly from the Purana Qila—Vinay Nagar Constituency. He got two replicas of huts prepared for his own self and got one of them mounted on an auto-rickshaw. Later he withdrew on the last day fixed for withdrawing. He then presented the one mounted on auto-rickshaw to the K.M.P.P. Delhi. He had spent Rs. 86 in getting these replicas prepared, which amount he showed in his return of election expenses with the return he had filed the receipt about payment of Rs. 86. They were summoned from the Election Office and were before the Tribunal. It was not considered necessary to retain and exhibit them on this record. His statement is quite reliable. He is supported by R.W. 18, Dr. Rattan Lal Sharda, who is now a Congressman and has been elected to the Delhi Municipal Committee on Congress ticket. In 1951-52 he was General Secretary of the Delhi State K.M.P. Party. He has stated that Shri Mehta, had gifted one replica of hut which could be mounted on an auto-rickshaw to the K.M.P.P. and the K.M.P. Party used to parade it in the areas in which the K.M.P.P. Candidates were contesting elections to various seats. A placard was put on it exhorting people to vote for K.M.P.P. Candidates. There is nothing in his cross-examination to cast doubts on the correctness of his statement which impressed us favourably. This point too is, therefore, decided against the petitioner.

(g) In (1) of list (1) of petition coupled with (i) (g) of list (1), of replication it is alleged that the petitioner spent on the polling day (14th January, 1952), at best Rs. 20 per polling station as hire of furniture, decoration, transport charges and diet expenses of workers. There were 219 polling stations. Petitioner has alleged that whatever was spent has been shown in the return and that she had no establishments at any polling stations and had hired no furniture. There is no evidence worth the name on behalf of the petitioner on these allegations and we decide this point also against the petitioner.

(h) In (1) (h) of list (1), of petition and (1) (h) of list (1) of replication it is alleged that the cost for printing and distributing slips issued to voters has not been shown in the return. Estimate given is Rs. 260. Respondent's reply is that the cost of getting voters slips is included in the return. No such amount was spent in getting them distributed, besides the pay of two messengers who were employed and whose pay is shown in the return. They were distributed mostly through honorary workers. The respondent is supported by entries in the return and on behalf of the petitioner there is no evidence to show that any other expenses were incurred in this connection which may not have been shown in the return. This point too is decided against the petitioner.

The result is that the petitioner has failed to show that the respondent No. 1, incurred, by herself or by her agents any expenses on account of the conduct or management of the election, over and above those shown in her return of election expenses (Ext. R/1), or that her expenses exceeded the maximum of Rs. 12,000/- laid down in schedule V of the Representation of the People (Conduct of Elections and Election Petition) Rules 1951, and the issue is decided accordingly against the petitioner.

Issue No. 3—This has not been pressed *vide* statement of the petitioner's counsel made on 16th June, 1954.

Issues Nos. 5 and 6—At the time of argument, Shri Ved Vyas, who mainly argued on behalf of the petitioner said that he did not press these issues and advanced no arguments regarding them. This was very tactfully done to avoid consideration of hopelessly unreliable evidence of the petitioner produced on these points. In view of that statement however it is not necessary to consider the evidence and these issues are decided against the petitioner.

Issue No. 7.—The petitioner's evidence on this point consists of the statements P.W. 6, Smt. Bhagwanti, P.W. 7, Dr. Manohar Singh, and P.W. 8, Shri Bhagwan Dass Seth. Of these the first two have been dealt with in issue No. 1, and have been found unreliable. On this point too they cannot be believed. Smt. Bhagwanti in her statement on 12th June, 1954, stated that on behalf of the petitioner she went on supervisory duty on the polling day at some polling booths in Rajender

Nagar and then she found that supporters of the respondent were canvassing for her and for Shri Chakervorty, a Candidate for the Delhi State Assembly within 100 yards of the polling booths. In cross-examination she conceded that it was her duty to report about such irregularities, yet she did not complain to any officer and sent no report to any one. What is still more strange is that she conceded that Shri Chakervorty, was a Congress Candidate. Can it be believed that the supporters and workers of the respondent would also canvass for a Congress Candidate? She could not name the persons who were so canvassing and who can say that they were supporters of the respondent. P.W. 7, the unqualified and unregistered, yet specially favoured medical practitioner is no better. In fact he is still more unreliable having been more under various obligations. In 1949-50 he worked as Sub-Inspector in the Special Police Establishment, Ministry of Home Affairs and later he got transferred into a Doctor. His son is employed in the Directorate of Social Welfare, of which the petitioner is an honorary Director. In 1950, he obtained licence for the sale of methylated spirit, probably through the influence of the petitioner. He admitted that he made no complaint in writing about the alleged irregularity to any one why it is not explained. P.W. 8, Bhagwan Das, was polling agent at the polling station in Shop No. 21, Rajendar Nagar, on behalf of Shri Chakervorty. He had to remain inside the booth, as admitted by him and cannot be expected to see what was happening outside. He did not complain to any body. As a Congressman he is interested in the petitioner who was a Congress candidate.

The petitioner has thus failed to substantiate her allegations and the issue is decided against her.

Issue No. 8.—The petitioner had not been able to show that the respondent No. 1, obtained any vote by any corrupt or illegal practice and the issue is decided against her.

Issue No. 2.—The total number of voters on the roll of the New Delhi Parliamentary Constituency was 1, 84, 543. Under Schedule VI, of the Representation of People (Conduct of Election and Election Petitions), Rules, 1951, read with Rule 118, the number of persons who could be employed for payment by each candidate or his election agent in connection with the election was as follows:—

- (i) one election agent;
- (ii) one counting agent;
- (iii) three clerks; and
- (iv) three messengers

Of course, in addition to this, each candidate could employ one polling agent and one messenger and two relief agents for every polling booth.

Under Section 76, of the Representation of People Act read, with Rule 112 of the Representation of People (Conduct of Elections and Election Petitions), Rules 1951, each candidate is required to lodge with the Returning Officer a return of his election expenses signed by him and his election agent in the prescribed form. Accordingly on 6th March, 1952, respondent No. 1, Smt. Sucheta Kripalani, lodged the return of election expenses (Ext. P/4). It was accompanied by the requisite declaration sworn by her on the 5th of March, 1952, before Shri A. P. Bagal, (P.W. 26). In accordance with rule 113, a notification in this connection was published in the Official Gazette and on 7th March, 1952, the petitioner Shrimati Manmohini Sehgal, filed the present election petition challenging the election of Smt. Sucheta Kripalani on various grounds, *inter alia*:—

- (a) that the return of election expenses was false in material particulars; and
- (b) that the respondent No. 1, Smt. Sucheta Kripalani, was guilty of a major corrupt practice u/s. 123(7), of the Representation of People Act, 1951, inasmuch as she had, in connection with her election, employed for payment by herself and her agent, persons other than and in addition to those specified in Schedule VI, thus contravening rule 118, framed under Section 77, of the Representation of People Act.

On 17th April, 1952, a notification was published by the Election Commission stating that the respondent No. 1 had incurred the disqualification, as the return of election expenses submitted by her was defective. In this connection, Smt. Sucheta Kripalani also received a notice from the Returning Officer on 21st April, 1952. Thereupon she filed another return (which has been called in the course of these proceedings as second or revised return) and also made a representation

replying to the objections which had been raised to the first return. Under Section 144 of the Representation of People Act, the Election Commission by its notification dated 7th May, 1952 removed the disqualification and accepted the revised return (Ext. R/I).

In Part B of the return of election expenses, a candidate is required to give the details of the expenditure incurred by him or his election agent "for the remuneration of agents (including election agent) clerks and messengers". In the original return (Ext. P/4), Smt. Sucheta Kripalani entered the names of 259 persons and the payments made to some of them were shown as for "piece work" and to some as "salary". In the subsequent or the revised return, the names of only six persons were retained in Part B, while the rest were transferred to Part K. In para 7(II) of the petition, Shrimati Manmohini Sehgal has alleged that respondent No. 1 (Smt. Sucheta Kripalani) was guilty of major corrupt practice inasmuch as she had employed for payment a number of persons in connection with her election in excess of that allowed under the Representation of People Act. The details of this objection were given by her in list 2 attached to the petition. There she stated, *inter alia*, that 45 persons, whose names were entered in serial numbers 66 to 77 and 87 to 119 of the first return (Ext. P/1) had been employed by the respondent No. 1 in connection with her election and none of them was the polling agent, relief agent, or booth messenger. In para. No. 3 of the said list, the petitioner further alleged that besides that payments made to these 45 persons, respondent No. 1 had paid a large number of persons for "piece work", the details of which were given by her in serial Nos. 22 to 29, 31, 32, 34, 42, 44 to 63, 78 and 85 of Part B of the original return (Ext. P/4). These payments, according to the petitioner, were on account of remuneration to the paid workers.

In her written statement, Shrimati Sucheta Kripalani denied these allegations and asserted that she never employed for payment any person in excess of the three clerks and three messengers mentioned in Part B of the revised return Ext. R/I. In reply to list 2 attached to the petition, she explained that while preparing the original return there was misclassification and the payments made to her honorary workers were mistakenly shown in Part B along with the payments made to her six paid messengers and clerks. That mistake had been rectified in filling the second return, in which the payments shown in Part K were out of pocket expenses of her honorary workers and not in payment of their salary or remuneration.

In her replication, the petitioner Smt. Manmohini Sehgal reiterated the allegations made by her in para. No. 7 of list 2 of the original petition. She further asserted that the revised return filed by the respondent No. 1 was concocted and vouchers were subsequently fabricated with a view to avoid the consequences of employing more than the permissible number of paid workers.

This controversy between the petitioner and respondent No. 1 is the subject matter of Issue No. 2. The respondent No. 1 admitted that she could employ for payment only three messengers and three clerks in connection with her election. In fact, she asserted that she was conscious of this fact and gave explicit instructions to her workers not to employ more than the above number of persons for payment. She claimed that besides the six persons named in part B of the revised return (Ext. R/I), the other persons who were working for her were her honorary workers.

The petitioner, on whom the onus of issue No. 2 was placed did not lead any evidence to prove that in fact any of the persons named in Part K of the revised return was a paid employee and not an honorary worker of respondent No. 1, or that besides the six named in Part B of the second return, she had employed any others. Reliance was, however, placed on the first return of election expenses (Ext. P/4). That had been signed and sworn to by the respondent Smt. Sucheta Kripalani and her election agent N. Krishnaswamy. It was pointed out that in Part B of that Return the payments made to persons named at serial numbers 66 to 77 and 87 to 119 was not on account of any out of pocket expenses, but as remuneration or salary. Similarly the payments made to others, about 119 in number, shown in the same Return (Ext. P/4) as on account of "piece work" also indicated that those persons were employed for payment. Those persons were remunerated for the work they did in connection with the election of respondent No. 1 and they were not her honorary workers.

On examining Part B of the original Return, one finds that besides the six workers, whose names now appear in Part B of the revised Return, the payments made to a large number of persons were described as "salary". In the details,

the number of the days for which the payment was made was also specified as well as the rates. The petitioner's case has been that since respondent No. 1 had himself signed and verified the original return including Part B this return was a clear admission of the fact that she had employed more than three clerks and three messengers for payment in connection with her election, and in view of this admission the onus of Issue No. 2 shifted to respondent No. 1 and it was her duty to satisfy the Tribunal that she had not employed for payment more than the permissible number of persons in connection with her election.

Though, under Section 31 of the Evidence Act, admissions are not conclusive proof of the matters admitted, yet they furnish an important piece of evidence. There is abundant authority for the proposition that an admission of a party is sufficient to shift the onus and casts the burden upon the person who made it to prove that what was then deliberately asserted was not correct. In the absence of any satisfactory explanation of the admission, or the proof that it was incorrect, it would require very strong and clear evidence to rebut the conclusions which may be drawn from the admission. In A.I.R. 1954 Supreme Court, 355, it was observed by their Lordships that what was admitted by a party to be true should be presumed to be true, unless the contrary is shown. In I.L.R. 29, Allahabad, 184, their Lordships of the Privy Council observed that an admission was proof of the fact admitted in the absence of anything to say that the admission was incorrect. A reference in this connection may also be made to a decision of the Lahore High Court reported as 223 Indian Cases, 505, to which Mr Justice Mahajan (later the Chief Justice of the Supreme Court) was a Party.

Respondent No. 1—Smt Sucheta Kripalani—appeared in the witness-box. She admitted that the first return (Ext. P/4) was signed by her and she also swore the declaration Ext. P/2 attached to it before a Magistrate. She had, however, attempted to get rid of the admission contained in Part B of this return on the following grounds:—

- (a) that the Return (Ext. P/4) was not prepared by her, but by her Election Agent N. Krishnaswamy;
- (b) that the entries relating to payments on accounts of salary or remuneration to workers other than the six, whose names appear in Part B of the revised return were wrong and not in accordance with the facts; and
- (c) that when she signed the Return (Ext. P/4) and swore the declaration attached to it, she was confined to bed on account of an injury to her spine and did not go through the return.

In support of these allegations, Smt. Sucheta Kripalani herself came into the witness-box as R.W. 9 and also examined her election agent N. Krishnaswamy (R.W. 22) who had also signed both the returns and had sworn the declarations attached to them. Smt Sucheta Kripalani (R.W. 9) stated that before she filed her nomination papers, she had met with a nasty accident which resulted in an injury to her spine, as a result of which she had to lay in plaster for a long time. It was only for a short while just before the polling day that she changed into a steel jacket which gave her some mobility and she could go about in connection with her election. The polling took place on the 14th of January, 1952. At that time, her husband (Acharya J. B. Kripalani) was also fighting an election as K.M.P.P. Candidate from Faizabad (U.P.) and since he was not fairing well, she had to go to Faizabad. On account of this added strain, her trouble got aggravated, with the result that in March, she had to return to Delhi and was again put back into plaster. She tells us that while she was thus confined at the residence of Dr. Miss Malkani, a friend of hers, that the first return (Ext. P/4) was brought to her for signatures. In fact, Shri B. P. Bagai (P.W. 26), before whom the declaration attached to this Return, was sworn, has proved that in connection with the swearing of this declaration he went to the residence of Dr. Malkani and at the time the respondent No. 1 signed the return, she was confined to bed. In these circumstances, we are prepared to believe that the return (Ext. P/4) was not prepared by Smt. Sucheta Kripalani herself. She, however, stated that when she signed and verified the return, she did not go through it. She merely 'glanced at it'.

Smt. Sucheta Kripalani (R.W. 9) stated that the first return was prepared by N. Krishnaswamy without consulting her and he by mistake included the payments made to the honorary workers for food and conveyance in Part B of that Return. The accounts of her election expenses were being kept by Bharat Sahai, who was an employee of the Central Relief Committee and worked for her in an

honorary capacity in his spare hours. N. Krishnaswamy (R.W. 22) however, tried to shift the blame for preparing the first return (Ext. P/4) to a dead man. He stated that when Smt. Sucheta Kripalani was lying ill at the house of Dr. Malkani, he went to see her. Smt. Sucheta Kripalani then complained to him that Shri R. Ayanger—a friend of hers—to whom she had entrusted the work of preparing the return of her election expenses did not appear to have done anything in the matter and since very little time was left, N. Krishnaswamy should get the papers from Bharat Sahai and prepare the return of election expenses. Next day, so stated N. Krishnaswamy, he tried to contact Bharat Sahai, but found that he had left for Bihar. Before leaving, however, he had left the papers with R. Iyenger. On contacting the latter, N. Krishnaswamy R. W. found that Shri Iyenger had prepared a rough return which had still to be finalised. N. Krishnaswamy thereupon asked him to give the return its final shape. Next day, he found that the return had been typed out and he took the papers to Smt. Sucheta Kripalani.

14. When the attention of N. Krishnaswamy R.W. was drawn to the fact that the return (Ext. P/4) was signed and verified by him and he had also declared on solemn affirmation that it was correct, he explained that he had no personal knowledge of the expenses incurred by Smt. Sucheta Kripalani in connection with her election, but at the time he first contacted R. Ayanger, he had seen 6 or 7 bundles of vouchers with Shri R. Iyenger. N. Krishnaswamy admitted that he roughly checked the entries in the return (Ext. P/4) and found that though the vouchers showed that the amount paid to these workers was on account of diet, etc., Shri Ayanger had entered in Part B of the Return (Ext. P/4) as if they were for "piece work", "salary", etc. and had also given the rates at which those payments were made. He brought this to the notice of Iyenger and asked him why these entries in the return did not tally with the vouchers, to which Iyenger replied that since there was a specific column for rate in Part B of the return, he had made some calculations from the relevant vouchers. This was an ingenuous attempt made by N. Krishnaswamy to explain the words "salary", the "rate of salary", etc. noted against various payments in Part B of the return (Ext. P/4). It is significant that Shrimati Sucheta Kripalani in the course of her evidence did not at all make any reference to R. Iyenger. Along with the second return, Smt. Sucheta Kripalani as well as N. Krishnaswamy R.W. had sent a representation to the Election Commission explaining the entries in the first return. They nowhere referred to R. Iyenger, nor did they allege that he was responsible for the mistakes in the first return. The only reference in the representation of Smt. Sucheta Kripalani is to a "friend". This her counsel—Shri N. C. Chatterjee—frankly admitted was not to R. Iyenger but to N. Krishnaswamy. We have, therefore, not the slightest doubt that N. Krishnaswamy has deliberately introduced R. Iyenger into the picture, who according to his own allegations is dead, because he knew that a dead man cannot be contacted and he would not be there to contradict him. Our conviction is that the first return (Ext. P/4) was prepared by N. Krishnaswamy himself.

15. The respondent's case has been that the account of the election expenses of respondent No. 1 was maintained by the Bharat Sahai, an employee of the Central Relief Committee, Delhi. The cash book was produced in the course of the trial, but Bharat Sahai did not come into the witness-box. No doubt he was summoned as a witness by the respondent but on the day for which he was actually served, although it is admitted that he was present, he was not examined. The respondent No. 1 then undertook to produce him in court on her own responsibility later on but she failed to do so. Despite that the Tribunal gave her several opportunities to bring Bharat Sahai into the witness-box, but on one excuse or another the witness avoided coming to the court. In fact we got the impression that instead of giving up the witness, because it did not suit the respondent, a persistent attempt had been made on behalf of the respondent to force the Tribunal to close the case without examining Bharat Sahai and thus avoid the blame for his non-production as a respondent's witness. The fact of the matter remains that Bharat Sahai who was keeping the accounts and who according to respondent No. 1 herself was getting the vouchers in connection with her election expenses signed by her never came forward to support the respondent's case and say on oath that the entries in Part B of the first return were not in accordance with the facts.

16. Even if it be believed that Shrimati Sucheta Kripalani did not go through the return (Ext. P/4) while signing and verifying it, we are of the opinion that she cannot get rid of those entries. All the entries in Part B of the return (Ext. P/4) were made on the basis of vouchers (Exts. R. 6/1 to R. 6/217). Shrimati Sucheta Kripalani stated that all these vouchers were signed by her and they were correct. To most of the vouchers are attached receipts, evidencing payments and the details of the payments. Shrimati Sucheta Kripalani (R.W. 9),

however, did not refer to any of these papers attached to the vouchers. Though in most of the vouchers, the expenses were stated to be "as per statement attached" she scrupulously avoided referring to these attached statements or to explain the entries in such statements. For taking up that position she took advantage of the fact that these statements naturally do not bear her signatures. In reply to a specific and direct question, she said she could neither admit nor deny these documents as they did not bear her signatures. In these statements of expenses attached to a number of vouchers, the payments to various persons whose names occur in Part B of the return (Ext. P/4) are shown to be on account of salary or for piece work. The corresponding vouchers, however, state that these payments were for "diet and conveyance". Thus there is no doubt that if the vouchers are taken into account without any reference to the supporting papers, the plea of respondent No. 1 that the payments made to persons other than the six, who were admittedly her paid employees, were on account of diet and conveyance expenses stands established. We are of the opinion that the receipts and statements of accounts attached to the vouchers cannot be ignored. It is true that no one has come forward to state who had signed or prepared those receipts, nor they have been formally proved, yet they form part of the respective vouchers, to which they are attached. When the vouchers themselves refer to the attached statements, they cannot be taken to be complete, unless the papers attached to them are read along with them. Such vouchers, in which there is reference to the attached statements, are signed by Smt. Sucheta Kripalani R.W. She had admitted her signatures on them and stated that those vouchers were correct. She, however, did not say to what statements the references were. In fact in her cross examination she was confronted with several statements, which gave the details of her expenses as on account of salary, remuneration or piece work and was specifically asked if those statements were the same that were referred to in the respective vouchers. She replied that she was unable to say one way or the other, since none of those papers were signed by her.

17. It must, however, be remembered that all the vouchers along with their supporting papers were produced in duly tagged and sealed bundles from the office of Electoral Officer. The bundles were properly tagged and bore the original seals. This was admitted by N. Krishnaswamy (R.W. 22). He also admitted that these vouchers were filed in tagged and sealed bundles along with the first return. There was never any suggestion that these bundles had been interfered with, nor did respondent No. 1 or any of her witnesses suggest that any of the papers contained in these bundles had been substituted. Thus the vouchers (Exts. R6/1 to R6/217) must be considered in evidence along with their respective supporting papers and not without them.

18. The receipts and statements of accounts attached to the respective vouchers cannot be brushed aside as unproved documents. Though it is true that generally a document has to be proved by its writer, or executant, yet where this is not possible, proof can be furnished by circumstantial and other evidence. In the present case, we find that the statements and receipts, etc. attached to the vouchers (Exts. R6/1 to R6/217) are contained in those bundles of vouchers, which were originally filed with the Election Commission by the respondent through her agent. Each of these vouchers has been proved. The amounts of expenses given in the various statement tally with the amounts in their respective corresponding vouchers. The expenses detailed in the statements are apparently in connection with the election of the respondent. The names of the persons to whom the payments contained in the statements attached to the vouchers are stated to have been made were admittedly workers of the respondent No. 1, though she alleged about most of them that they were honorary workers and their names are contained in both the returns filed by her. Further more the details regarding the nature of the payments as contained in the statements attached to the vouchers tally with the details given in Part B of the first return (Ext. P/4). Apart from this, there has never been any suggestion that any of these papers attached to the vouchers Exts. R6/1 to R6/217 was not filed by the respondent or her agent along with the vouchers when the first return was submitted. In the face of all these facts, we are of the opinion that the said statements and other papers attached to the vouchers must be taken as sufficiently proved and being part of the vouchers themselves, have to be considered as evidence in the case.

19. Once these documents are taken into consideration, abundant evidence is available to prove that the payments made to persons named at Serial Nos. 66 to 77 and 87 to 119 in Part B of the first return (Ext. P/4) were as remuneration for the work done by them in connection with the election of respondent No. 1 and not for their out of pocket expenses. It is no doubt correct that the vouchers all state that the payments made to such persons were for diet and conveyance. It has been suggested on behalf of the petitioner that these vouchers have been

subsequently substituted for the original ones. Even if there be any ground for suspicion, it is not possible to give a finding to that effect. The vouchers along with the supporting papers were produced from official custody. However, it appears to us that the vouchers were from the start deliberately prepared to avoid giving the impression that more than the requisite number of persons were employed for payment by the respondent No. 1 in connection with her election, otherwise it cannot be explained how the nature of the payments as given in the vouchers materially differs from what is given in the statements of expenses attached to so many of them.

20. Shrimati Sucheta Kripalani respondent did not make any attempt to explain the statements of accounts attached to the vouchers or to reconcile the discrepancy in the description of the nature of the expenses, as entered in the vouchers and as given in the supporting papers. Since the entries in Part B of the first return find corroboration from these statements and receipts attached to the vouchers and the vouchers bear the signatures of Smt. Sucheta Kripalani herself, she cannot get rid of the admission contained in the first return by merely saying that at the time she signed and verified the return, she did not go through it, but just glanced at it. Whatever may have been the physical condition of Shrimati Sucheta Kripalani at the time she signed the return (Ext. P/4) in March, 1952, her own evidence is to the effect that in January she was going about though as some inconvenience in connection with her election work. The vouchers (Exts. R 6/1 to R 6/217) were signed by her on different days in January and prior to that. Thus at that time, there was nothing to prevent her from satisfying herself that the expenses mentioned in the vouchers were correct. These vouchers were not signed in one lot, but on various days. Surely on each of such days she must have been able to spare a few minutes to scrutinise the details of the expenses for which she had been signing the vouchers. In fact, she has not stated that she signed the vouchers without satisfying herself that they were correct, though she tried to shirk her responsibility by saying that she had full confidence in Bharat Sahai who was keeping the accounts and putting up the vouchers for her signatures.

21. For the foregoing reasons we are not prepared to accept the plea of Smt. Sucheta Kripalani that the expenses, the details of which were later on transferred to Part K of the second return, were made to honorary workers for their diet and conveyance expenses.

22. Now it became necessary to make payments for diet and conveyance to the honorary workers has been attempted to be explained by Smt. Sucheta Kripalani and N. Krishnaswamy R. W. They stated that whenever they found that some of their honorary workers were unable to go to their places for lunch, they used to pay them for refreshment and conveyance.

23. On reference to the entries in Part B of the Return (Ext. P/4) and the corresponding statements attached to the vouchers, we find that the payments to such workers were made at a fixed rate each day. It is thus apparent that the actual out-of-pocket expenses were not paid to them. Shri Ved Vyas, learned counsel for the petitioner, has contended that such payments indicated that they were not on account of diet and conveyance but as remuneration. He further argued that the payment of money for such purposes to a worker robbed him of the honorary character. The fact that the payments to such workers were made at a fixed daily or monthly rate certainly goes to show that they were not compensated for their actual out-of-pocket expenses.

24. Shri N. C. Chatterjee, learned counsel for respondent No. 1 has argued that the standard of proof adopted in such cases should be that of a criminal case and the onus of establishing a corrupt practice must always be on the petitioner. In this connection, he placed reliance upon U.P. Chamber of Commerce Case reported at page 840 of Sen and Poddars, Indian Election Cases (1935) 51, where it was observed that issues in an election case are of a criminal nature and the evidence must be of the same standard as was required in a Criminal Court in dealing with a criminal or a quasi-criminal charge. Shri Ved Vyas, on behalf of the petitioner, however, emphasized that under Section 90 of the Representation of People Act, an election petition has to be tried as nearly as possible in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. From this he concluded that the standard of proof required in criminal cases cannot be adopted in such trials. Sub-section (3) of Section 90 of the said Act further provides that the provisions of Indian Evidence Act would be applicable to the trial of an election petition. Thus it is with reference to the Indian Evidence Act that one has to consider whether a fact has been proved or not. We think the correct position is as stated in Habiganj South Case (Hammond Election

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it is the nature of the issue to be tried which determines

the standard of proof. Though where serious allegations of corruption etc. are made the court will have to satisfy itself that they are well-founded and would not merely proceed upon possibilities on the preponderance of probabilities yet it is wrong to say that in the trial of an election petition the onus can never shift. As in the present case, if admissions of a party are proved, the onus would certainly be on him to prove that those admissions are incorrect and he was not bound by them. In the present case, apart from the admissions contained in Part B of the first return (Ext. P/4), there is abundant evidence contained in the papers attached to the vouchers filed by the respondent herself along with her return which go to prove that Shrimati Sucheta Kripalani employed more than permissible number of persons on payment in connection with her election.

88. Shri Trilochan Singh (P.W. 15) an Assistant in the office of the Chief Electoral Officer, Delhi produced four bundles tagged and with their seals intact, which were filed by respondent No. 1 along with her first return. R.W. 22 N. Krishnaswamy has in his statement admitted that these are the very same bundles which he had filed along with the first return and their seals are in tact. These bundles contain the vouchers Exts. R6/1 to R6/217, and all the corresponding supporting statements, etc. In this connection, a reference may be made, *inter alia*, to vouchers (Exts. R6/206, 207, 208, 209, 210, 211 and 213 and the supporting receipts and statements of accounts attached to them.

The voucher Ext. R6/206 is for Rs. 250/-. The nature of the payment entered therein is "amount paid as per statement enclosed in connection with the expenses incurred towards diet, etc.". The statement attached to this voucher is the one that has been marked R6/206A. At the top of this statement appears the words "Jhandewala office staff payment". Below it payments of sums varying from Rs. 15/- to Rs. 40/- are shown to have been made to 8 persons. The period for which the payments were made is also entered against the name of each payee. Thus from this statement it is abundantly clear that the 8 persons to whom this aggregate sum of Rs. 250/- was paid were described as members of the staff of Jhandewala office. Smt. Sucheta Kripalani (R.W. 9) was confronted with the statement R6/206A. She asserted that the eight persons named therein were never employed by her for payment, as she had no election office at Jhandewala. She, however, neither admitted nor denied that the statement marked R6/206A was the same which referred to the voucher R6/206 bearing her signature. On reference to the first return (Ext. P/4), we find that the payments detailed in the statement R6/206A are entered at items 44 to 51, but the description of the payment given therein is "piece work Rs. 2/8/- PW." under voucher No. 206. In the corresponding entry in the cash book (Ext. R/5) the entry is "Sagar Chand food and conveyance as per statement 206—Rs. 250/-/-". From this, it is evident, that the description of this expenditure of Rs. 250/- given in the first return in the voucher Ext. R6/206 and in the cash book does not tally. While in the voucher it is stated only for "diet etc.", in the cash book the payment is shown on account of food and conveyance and part 'B' of the return Ext. P.4 it is stated to be on account of "piece work". The description given in the return Ext. P. 4, however, is borne out by the statement R6/206A which is attached to the corresponding voucher. This goes to show that the description of this payment as entered in the original return was correct and the voucher was wrongly prepared for diet and conveyance instead of remuneration for piece work.

The voucher Ext. R6/207 for Rs. 40/-/- purports to be for "diet etc." as per statement. Attached to this voucher are two receipts which read "Received Rs. 20/-/- pay of 5 days from 30th December 1951 to 3rd January 1952". It is obvious that the receipts do not support the voucher and they show that two payments of Rs. 20/- were made as remuneration for employment. Faced with these facts, Shrimati Sucheta Kripalani stated that the receipts marked R6/207A and 207B which were attached to the voucher R6/207 were not correct and she did not admit that these were the receipts on the basis of which the voucher R6/207 was prepared. She, however, could not point out to any other statement in support of this voucher. It may be observed that though Shrimati Sucheta Kripalani had persistently maintained that none of the payments were actually made by her, she repudiated the receipts marked R6/207A and boldly asserted that they were incorrect, while the voucher signed by her was correct. She, however, could not point out to any other paper to support her statement on this point. The description of the payment given in the receipts is borne out by the corresponding entries in part B of the first return.

Voucher Ext. R6/208 which purports to be in respect of expenses for diet etc. also refers to an enclosed statement. Attached to this voucher we find the statement marked R6/208A. The heading of this statement is "pay bill for Patel Nagar workers from 4th to 14th". Below it are given the names of six

persons to each of whom Rs. 7/12/- were paid. Surely the expenses incurred on their diet by these six persons could not have been the same.

The voucher Ext. R6/209 as attached to it the statement marked R6/209A which again is described as pay bill for Pussa workers and incharge for four days, while the description of the expenses in the voucher is "as per statement enclosed for diet, etc.". Voucher R6/210A relates to an expenditure of Rs. 390 which is described as "per statement enclosed in connection with conveyance and diet etc." Attached to this we find what has been described as a bill Ext. R6/210A. This document is rather important, because the 12 persons to whom the payments are shown therein our divided into two categories. Five of them including Dev Kumar Bhattacharjee (R.W. 16) were described as workers and the remaining as volunteers. To each of the five workers Rs. 50/- were paid while the volunteers received Rs. 20/- only. These payments according to the bill Ext. R6/210A were for the period from 30th December 1951 to 14th January 1952. Unlike the other papers which were found attached to the various vouchers this Bill Ext. R6/210A was duly proved by the respondents own witness Dev Kumar Bhattacharjee (R. W. 16). He, however, tried to explain that this bill relates to payment made to the 12 persons made therein on account of the actual expenses incurred by them over their diet and travelling. A look at the document itself, however, shows that it is telltale. It contains the names of 12 persons of which the first five are described as workers who were paid at Rs. 50/- each, while the others are described as volunteers who were paid Rs. 20/- each. It would be very suspicious that each person in the two sets should have incurred the same expenses over his diet and travelling and the division of these persons into two sets also appears very surprising. To explain this R.W. 16 has been made to say:

"The persons to whom the bill Ext. R6/210A relates were divided into two categories, one of workers and the other of volunteers. In the first category, the five persons named were those who were associated with the election work of Shrimati Sucheta Kripalani from early stages. Later we felt the necessity of associating more workers with us as the election days drew nearer. Those persons who joined us later and had volunteered to work with us were named in the category of volunteers. They were young boys who preferred being called (volunteers—the amount entered against the name of each worker and volunteer in the bill R6/210 does not represent actual expenses but a round figure of the expenses incurred by each of them—The actual expenses incurred by each of these persons had exceeded the round figures in the bill by a rupee or two."

This explanation is ridiculous on the face of it. In his cross-examination Bhattacharjee (R.W. 16) had to concede that the daily expenses were not uniform and the aggregate expenses incurred by the persons named in the bill were not the same. There could have been no earthly reason for each of them giving up a part of their actual expenses for the sake of the so called uniformity.

The statement of this witness, who is now living at Calcutta had happened to be at Delhi by chance to see the Industrial Exhibition and then to have met the respondent who asked him to appear as a witness on the next day, is not at all reliable. The assertion of Dev Kumar Bhattacharjee R.W. that the persons who had been shown as volunteers in Ext. R6/210A joined later is falsified by the document itself. The payments made to the workers and volunteers is shown therein for the same period i.e. from 30th December 1951 to 14th January 1952. This witness would have us believed that all the 12 persons who received payment under the bill Ext. R6/210A were honorary workers of respondent No. 1. It is curious that though young boys insisted on being called volunteers, grown up boys like Dev Kumar Bhattacharjee himself did not style themselves as volunteers, but as workers. From all these facts, little doubt is left in our minds that Dev Kumar Bhattacharjee and other workers named in the bill Ext. R6/210 were paid employees of respondent No. 1.

Even if it is conceded that the various statements attached to the vouchers could not be read in evidence, because they have not been formally proved the statement Ext. R6/210A which has been proved by Bhattacharjee (R.W. 16) is sufficient to establish that respondent No. 1 employed for payment more than six persons named in part B of the second return Ext. R.1, viz., the 12 persons mentioned in Ext. R6/210A.

It is interesting to point out that the voucher No. 212 which is also for diet, is supported by the statement R6/212, from which it appears that Rs. 100, each

were paid to four persons and Rs. 125 to another. The description of the payment is not shown in the statements. It is curious that these persons were paid as much as Rs. 100 and above for their "diet etc."

In view of the above discussion, our conclusion is that Shrimati Sucheta Kripalani respondent had actually employed for payment more than the requisite number of persons in contravention of the provisions of schedule VI and Rule 118 of the Representation of People (Conduct of Elections and Election Petitions) Rules, 1951 framed under section 77 of the Representation of People Act and we decide the issue accordingly against respondent No. 1.

Issue No. 4.—This issue depends upon the findings on issues Nos. 1, 2 and 3. While dealing with issue No. 2 we have held that respondent No. 1 had employed for payment more than six persons named in part B of her revised return Ext. R.1. Since in the second return, which is the subject matter of this issue, the names of the persons other than six admitted paid workers have been shown in Part K of the return, while the payments made to them too should have been entered in Part B, as they were also paid employees, the return is obviously false in material particulars.

Some other minor points have also been urged on behalf of the petitioners to establish that the revised return Ex. R.1 was false. Firstly, it was argued that the respondent should have included in her return ratable expenses that may have been incurred by the K.M.P.P. over the election campaign for Party candidates. There is no positive evidence on behalf of the petitioner to show that the K.M.P.P. had incurred any expenses specifically for the benefit of respondent No. 1. We are of the opinion that if a political party propagates its ideals and exhorts voters to vote for the candidates, who stands for those ideals, the expenses incurred by the Party cannot be said to have been the expenses incurred in connection with the election of a particular candidate, nor can they be ratably distributed over the various candidates.

Then it was pointed out that Shrimati Sucheta Kripalani (R.W. 9) had herself admitted that the printed forms on which the vouchers were prepared in connection with her election were supplied to her by the K.M.P.P. We do agree that the cost of such forms used by respondent No. 1 should have been included in her return.

The price of the copy book (Ext. R.5) in which the accounts of the respondent were maintained, is not shown in the return. The respondent has stated that in fact she does not remember if this was purchased for the purpose or was already lying with her, before she thought of contesting the election. The non-inclusion of the cost of the copy book which could be only a few annas, or the cost of the vouchers which could not possibly exceed Rs. 10 in all, does not make the return false in material particulars. There could have been no *mala fide* intent in not showing them in the accounts. The omission must have been purely accidental. However, in view of our finding on issue No. 2, this issue must also be found against the respondent No. 1.

Issue No. 9.—Since we have held in dealing with issue that the respondent had employed for payment in connection with her election persons other than those specified in schedule VI of Rule 118 of the Representation of People Act (Conduct of Election and Election Petitions) Rules, 1951, Shrimati Sucheta Kripalani was clearly guilty of the major corrupt practice described in sub-section (7) of section 123 of the Representation of People Act. In accordance with the provisions of sub-section (2) of section 100 of the Representation of People Act, her election must be declared to be void and we decide the issue accordingly.

Issue No. 10.—This issue was not pressed at the time of arguments and we see no basis for declaring the petitioner elected in place of the respondent, especially when issues Nos. 1, 3, 5, 6, 7 and 8 have been decided against the petitioner.

In view of the decision of their Lordships of the Supreme Court in A.I.R. 1955 S.C. 830 (Tirath Singh Vs. Bachittar Singh and others), no notice was deemed necessary to issue to respondent No. 1 u/s 99 of the Representation of People Act. Her election agent N. Krishna Swamy who had appeared as R.W. 22, and had signed both the returns of the election expenses P.4 and R.1 was, however, called upon to show cause why he should not be named for filing the return (Ext. R.1) which was false in material particulars. He contested the notice and the position taken up by him has already been noticed in the opening

portion of this order. Actually, he neither produced any further evidence, nor examined himself in connection with this notice. We are thus only to consider the result of our finding on issue No. 2 as to what extent he has been affected thereby and that finding is that Shrimati Sucheta Kripalani employed for payment persons in excess of the number permissible under the law. Admittedly N. Krishna Swamy was not an agent of the respondent at the time when those persons were employed. For the first time, he came on the scene on the day when the counting of votes was to take place and he was nominated election agent for that purpose by respondent No. 1. Consequently he cannot be held liable for the major corrupt practice of employing more than the permissible number of persons in connection with the election of Shrimati Sucheta Kripalani.

It is, however, admitted by him and is also clear from the statement of Shrimati Sucheta Kripalani that he too had a hand in the preparation and filing of the revised return Ext. R.1. We have also held that he was responsible for preparing the first return, in which the payments in part B were incorrectly shown. Thus, he too is responsible for intentionally transferring most of the items which were rightly shown in part B of Ext. P.4 to part K of Ext. R.1. To this extent he is guilty of the minor corrupt practice, as defined in section 124(4) of the Representation of People Act.

In view of our findings on Issues Nos. 2 and 4, Shrimati Sucheta Kripalani (respondent No. 1) must be named under section 99 as the person guilty of the following corrupt practices:—

- (a) She employed for payment a number of persons in contravention of schedule VI of Rule 118 of the Representation of People Act (Conduct of Elections and Election Petitions) Rules, 1951 read with section 77 of the Representation of People Act; and
- (b) She made the return (R.1) of her election expenses which is false in material particulars and made a declaration verifying the same.

In accordance with the provisions of section 141 of the Representation of People Act, Smt. Sucheta Kripalani (respondent No. 1) and her election agent N. Krishnaswamy would incur disqualification mentioned therein. We are, however, of the opinion that recommendation be made to the Election Commission to exempt them from such disqualification. Our reasons for such recommendation are:—

- (a) The petitioner had charged the respondent No. 1 with having been guilty of a large number of major and minor corrupt practices, but the evidence before us shows that no other corrupt practice of any sort was indulged in by or on behalf of the respondent and on the whole her conduct was very fair and above board.
- (b) Respondent No. 1 was physically very much handicapped at the crucial time on account of the serious injuries received by her in the car accident, and so could not properly control the employment of workers and limit it to the permissible maximum.
- (c) Even regarding this employment of more than six persons, there is no direct evidence on behalf of the petitioner and conclusions in that respect have been arrived at in view of the legal point about the admissibility of the statements, etc. attached to vouchers (Exts. R6/1 to R6/217) and the sifting of the burden of proof.
- (d) N. Krishnaswamy is a youngman yet and appears to be inexperienced in such matters. He appears to have acted foolishly without any benefit to himself.

107. As regards costs, we are of the opinion that the parties should be made to bear their own costs. Most of the costs incurred have been because of the examination of quite a large number of witnesses. The witnesses of the petitioner in support of her allegations regarding corrupt practices are all unreliable and have been disbelieved. Practically all the Issues except Nos. 2 and 4 have been decided against the petitioner.

ORDER

108. The petition is allowed and the election of the respondent No. 1 Shrimati Sucheta Kripalani is hereby declared void.

109. The parties shall bear their own costs.

110. Under section 99 of the Representation of the People Act, Smt. Sucheta Kripalani (respondent No. 1) is named as a person guilty of the corrupt practices:—

- (a) of having employed for payment a number of persons in contravention of Schedule VI of Rule 118 of the Representation of People Act (Conduct of Elections and Election Petitions), Rules 1951 read with section 77 of the Representation of the People Act; and
- (b) for having made the Return (Ext. R/1) of her election expenses, which is false in material particulars.

111. N. Krishnaswamy, Election Agent of the respondent No. 1 is named as the person guilty of the minor corrupt practice of filing the Return of the election expenses Ext. R/1, which to his knowledge was false in material particulars, as pointed out in the finding.

112. For reasons already given above, we, however, recommend that Smt. Sucheta Kripalani (respondent No. 1) and her agent N. Krishnaswamy be exempted from the disqualification incurred by them on this account.

Announced:

(Sd.) GURDEV SINGH, *Chairman.*

April 25, 1956.

(Sd.) DURGA PRASAD NAIR, *Member,*

(Sd.) ANAND BEHARI LAL, *Member.*

[No. 19/106/52-Elec.III/7524.]

By Order,
P. S. SUBRAMANIAN, *Secy.*